



## Board of Adjustment Case Report

City of Raleigh  
Department of City Planning  
One Exchange Plaza  
Raleigh, NC 27601  
(919) 996-2626  
www.raleighnc.gov

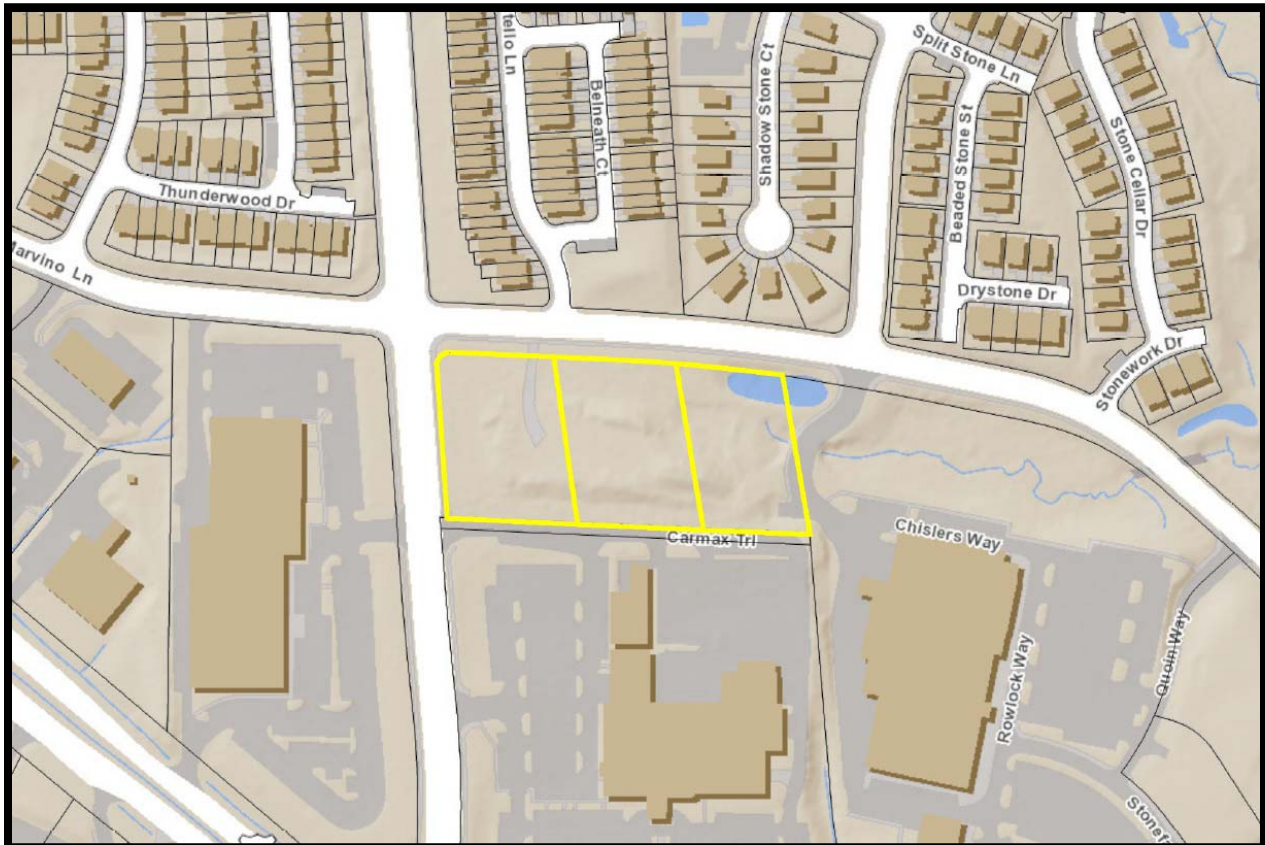
**Case File:** A-41-17

**Property Address:** 8551, 8531 and 8511 Marvino Lane

**Property Owner:** MDI Management, LLC

**Project Contact:** Isabel Mattox

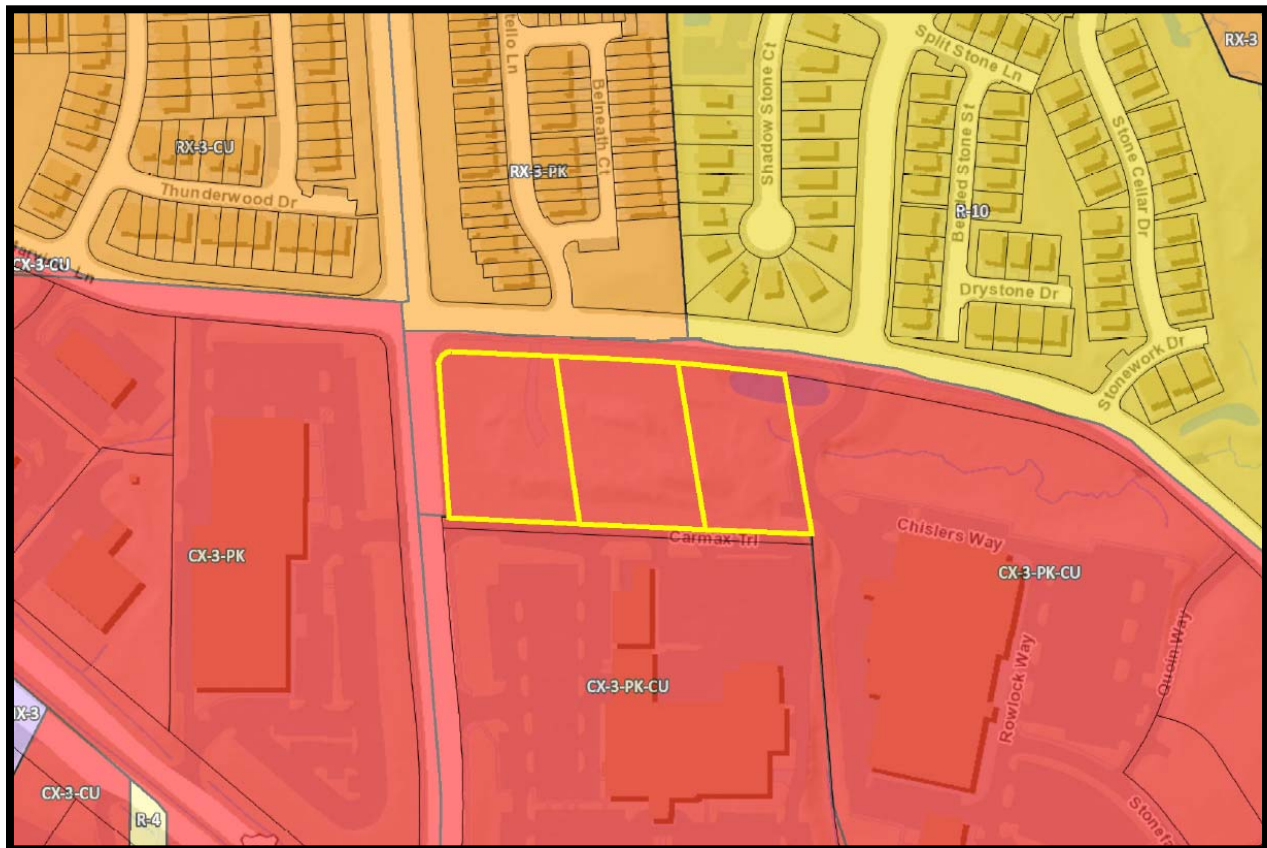
**Nature of Case:** A request for a variance for complete relief from the 50' Parkway frontage Protective Yard requirements of Section 3.4.3. for the portion of the property along Marvino Lane that is encumbered with a private stormwater maintenance/access easement along the north east corner of the 3.4 acre property zoned Commercial Mixed-Use-3-Parkway Conditional Use District and located at 8551, 8531 and 8511 Marvino Lane.



**8551, 8531, & 8511 Marvino Lane – Location Map**

**To BOA:** 3-13-17

Staff Coordinator: Eric S. Hodge, AICP



**ZONING DISTRICTS:** Commercial Mixed-use-3 Parkway Conditional Use District

### 8551, 8531, & 8511 Marvino Lane– Zoning Map

**VARIANCE STANDARDS:** In accordance with UDO [§10.2.10 Variance](#), before a variance request is granted, the Board of Adjustment shall show all of the following:

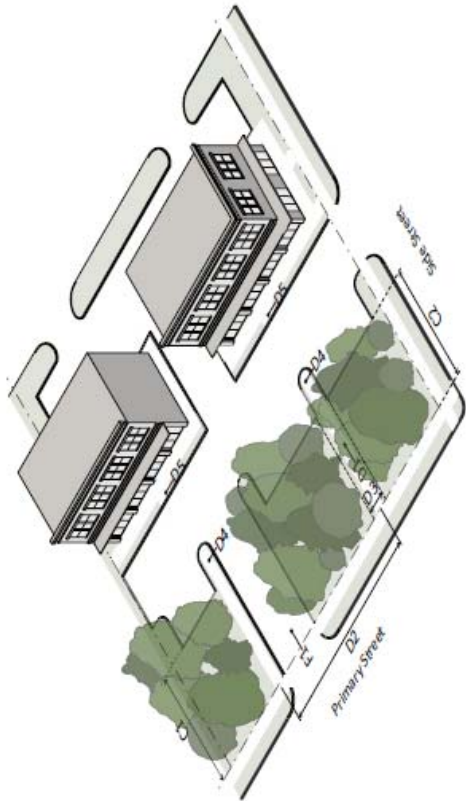
1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
2. The hardship results from conditions that are peculiar to the property, such as location, size or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
4. The requested variance is consistent with the spirit, purpose and intent of the ordinance, such that public safety is secured and substantial justice is achieved.

**Zoning District Standards:** The subject property is zoned Commercial Mixed-Use-3-Parkway Conditional Use District



Sec. 3.4.3. Parkway (-PK)



A. Description	
Provides for a heavily landscaped buffer between the roadway and adjacent development to ensure a continuous green corridor along the street right-of-way.	
B. Building Types Allowed	
Detached house (see Sec. 3.2.1.)	General building (see Sec. 3.2.5.)
Attached house (see Sec. 3.2.2.)	Mixed use building (see Sec. 3.2.6.)
Townhouse (see Sec. 3.2.3.)	Civic building (see Sec. 3.2.7.)
Apartment (see Sec. 3.2.4.)	Open lot (see Sec. 3.2.8.)
C. Additional Setbacks	
C1 Building setback from primary street (min)	50'
C2 Parking setback from primary street (min)	50'

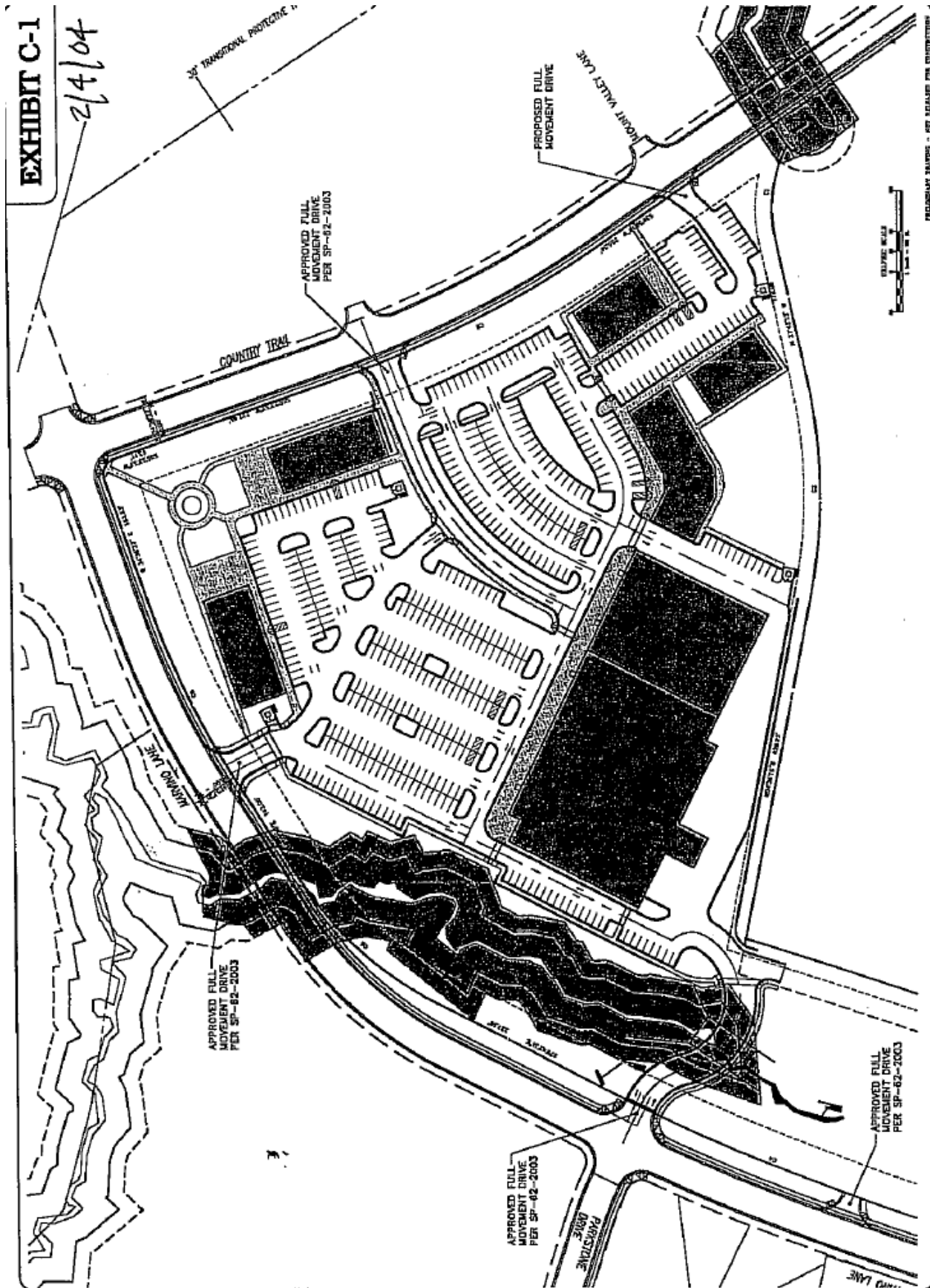
D. Pedestrian Access	
D1 Pedestrian access required (minimum of 1 per lot)	Yes
D2 Pedestrian access way spacing (max)	300'
D3 Width of pedestrian access way (min/max)	10'/20'
D4 A road or driveway with a sidewalk at least 6 feet in width may substitute for a required pedestrian access way	
D5 Direct pedestrian access is required from the public sidewalk to the primary entrance of the building	
E. Protective Yard Landscaping	
The 50-foot protective yard must be landscaped in accordance with Sec. 5.3.1.F. (SHOD-1 requirements) or Sec. 5.3.1.H. for expansions and additions.	
F. Protective Yard Encroachments	
F1 Driveways	see Sec. 8.3.5.
F2 Ground signs	see Article 7.3.
F3 Pedestrian access way	
G. Streetscape Requirement	
Sidewalk & tree lawn	
	see Sec. 8.5.2.G.

**Z-8-04** – on the south side of Marvino Lane, between Ebenezer Church Road and Country Trail. Approximately 18.64 acres to be rezoned from Thoroughfare District Conditional Use to Thoroughfare District Conditional Use with revised conditions.

**Conditions: 02/04/04**

- (1) Allowed land uses upon the Property shall consist only of Commercial, Institution/Civic/Services, Office, and/or Residential uses as set forth in the Schedule of Permitted Land Uses in Zoning Districts for the Thoroughfare District in Section 10-2071 of the Raleigh City Code.
- (2) Vehicular access to the Property shall be limited to no more than five (5) locations as generally shown on the map attached hereto as Exhibit C-1









# Application for Variance



RALEIGH  
DEPARTMENT OF  
CITY PLANNING



Department of City Planning | 1 Exchange Plaza, Suite 300 | Raleigh, NC 27601 | 919-996-2626

Submit application to: Development Services Customer Service Center, 1 Exchange Plaza, Suite 400, Raleigh, NC 27601

NATURE OF REQUEST	OFFICE USE ONLY
Nature of variance request (If more space is needed, submit addendum on separate sheet): We are requesting a Variance to Article 5.3.1.D.1.b. in order to reduce the 50' Parkway Frontage Protective Yard along approximately 175' of Marvino Lane to a combined width of no less than 50' when the 50' Parkway Frontage Protective Yard runs adjacent to the existing Private Stormwater Maintenance/Access Easement along the north east corner of the property. Please see attached for justification and plan exhibits.	Transaction Number  A-41-17
Provide all previous transaction numbers for Coordinated Team Reviews, Due Diligence Sessions, or Pre-Submittal Conferences. If this property was the subject of a previous variance request, provide the case number. Transaction #490846	

GENERAL INFORMATION		
Property Address 8551, 8531 & 8511 Marvino Ln., Raleigh, NC 27616		Date 2-9-17
Property PIN 0777678891, 0777770890, 0777772779	Current Zoning CX-3-PK-CU	
Nearest Intersection: Marvino Lane & Ebenezer Church Road		Property size (in acres) 3.4
Property Owner: MDI Management, LLC	Phone:	Fax
Owner's Mailing Address 120 4 <sup>th</sup> St SW Hickory, NC 28602-2947	Email:	
Project Contact Person: Thomas Speight, Jr.	Phone: 910-308-2637	Fax: 919-577-1081
Contact Person's Mailing Address: 2524 Reliance Ave. Apex, NC 27539	Email: Tom@BatemanCivilSurvey.com	
Property Owner Signature <i>Roger Henderson</i>	Email: <i>roger.henderson@ALEXLEE.COM</i>	
Notary  Sworn and subscribed before me this <u>9</u> day of  <u>February</u> , 20 <u>17</u>	Notary Signature and Seal  <div style="border: 1px solid black; padding: 5px; text-align: center;">Shirley H. Smith NOTARY PUBLIC Davie, NC My Commission Expires March 27, 2021</div>	

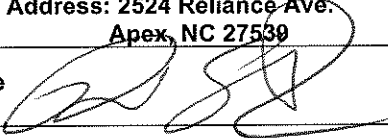
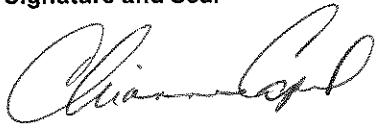

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Property PIN 0777678891, 0777770890, 0777772779	Current Zoning CX-3-PK-CU	
Nearest Intersection: Marvino Lane & Ebenezer Church Road		Property size (in acres) 3.4
Property Owner: Shenandoah Homes – David Stallings	Phone: 919-618-2060	Fax
Owner's Mailing Address 2840 Plaza Place, Suite 200 Raleigh, NC 2762	Email: David@ShenandoahHomes.us	
Project Contact Person: Thomas Speight, Jr.	Phone: 910-308-2637	Fax: 919-577-1081
Contact Person's Mailing Address: 2524 Reliance Ave. Apex, NC 27539	Email: Tom@BatemanCivilSurvey.com	
Property Owner Signature 	Email: David@ShenandoahHomes.us	
Notary Sworn and subscribed before me this <u>8</u> day of <u>February</u> , 20 <u>17</u>	Notary Signature and Seal  	

## **Lincoln Park Townhomes at Marvin Lane**

### **Variance Application Justification**

Transaction # 490846

We are requesting a Variance to Article 5.3.1.D.1.b. of the Raleigh UDO stating:

“Where necessity requires the location of a public or private utility easement adjacent to the Major Access Corridor that prohibits locating the required planting of the protective yard immediately adjacent to the right-of-way, the required protective yard must be provided adjacent to the utility easement.”

The Private Stormwater Maintenance/Access Easement located in the north east corner of the subject property was dedicated around an existing stormwater management facility with the Cornerstone Park Lot 2 Subdivision/Easement Dedication recorded in Book 2005, Page 0633 of the Wake County Registry on April 15<sup>th</sup>, 2005 (please see attached). At the time of recordation, there was also a 40' transitional yard shown along the property frontage of Marvin Lane which extended through the Private Stormwater Maintenance/Access Easement. There are additional easements shown on the 2005 plat including a 20' City of Raleigh Sewer Easement (Book 2000, PG 2238) that was proposed to be extended, but is now proposed to be abandoned in order to facilitate the contiguous TCA. Also shown on the plat is a 20' Private Storm Drainage Easement (Book 2000, PG 2238) that is now interior to the larger facility easement that was dedicated in 2005.

Since the Cornerstone Park plat was recorded in 2005, the relationship of the Private Stormwater Maintenance/Access Easement to the required Yards along the Marvin Lane frontage has changed. As shown on the 2005 plat, the 40' Transitional Yard is shown running along the entire property frontage and overlapping the Private Stormwater Maintenance/Access Easement. The original submissions for this property were prepared following that same pattern but with the new 50' Parkway Frontage Protective Yard. It was then brought to our attention that, with the adoption of the Raleigh UDO in 2013, the new regulations push the 50' Parkway Frontage Protective Yard behind the Private Stormwater Maintenance/Access Easement

Due to the ongoing nature of this parcel of land, some of the previously shown buffers and yards are no longer applicable under the current UDO that was adopted 2/18/13. Along the same lines, many of the current buffers and yards that are applicable now, were not in place upon the parcel's previous recordation and partial development (swm facility).

Article 5.3.1.D.1.b. requires the 50' Parkway Frontage Protective Yard to be placed adjacent to the existing private stormwater maintenance/access easement pushing the proposed yard up to 136' into the parcel and severely impacting the developable area. Since Article 9.1.4.A. dictates the area to be set aside as Primary Tree Conservation Area, we understand the

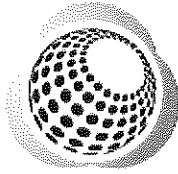
ultimate goal of the UDO to be the preservation of the exiting tree cover for 50' along the property frontage with Marvino Lane.

While the entire frontage of the property is currently wooded, the proposed development does not intend to disturb the existing private stormwater facility or clear any of the existing vegetation currently located within the boundaries of the private stormwater maintenance/access easement. As shown on our plans, TCA #7 will supplement the existing easement for a cumulative depth of 50' of exiting woods. Although we understand that the easement area cannot be calculated as TCA, the project exceeds the TCA requirements.

This is why we are requesting a Variance to Article 5.3.1.D.1.b. for the 175' of property frontage affected by the existing Private stormwater Maintenance/Access Easement. We truly feel that the proposed development meets the Goals of the UDO to provide a contiguous 50' wide Protective Yard along the entire frontage with Marvino Lane while not punishing the developer by greatly reducing the area available for development as a result of existing facilities that were in place long before the current UDO regulations went into effect. A Variance to allow the placement of the 50' Parkway Frontage Protective Yard concurrent with the Private Stormwater Maintenance/Access Easement for approximately 175' will allow for the Goals of the UDO to be met while not encumbering the parcel with restrictions that will greatly impact the developable area.







**BCSC**  
BATEMAN CIVIL SURVEY COMPANY

Bateman Civil Survey Company, PC  
2524 Reliance Avenue  
Apex, NC 27539

Phone: (919) 577-1080  
Fax: (919) 577-1081  
info@batemancivilsurvey.com

**List of Adjacent Properties Owners within 100' of Lincoln Park**

PIN 0777776392

Cornerstone Commons  
3725 Beam Rd., Unit B  
Charlotte, NC 28217-8800

PIN 0777771272

Spirit Master Funding VI LLC  
c/o Spirit Realty Capital  
16767 N Perimeter Dr., Ste. 210  
Scottsdale, AZ 85260-1062

PIN 0777675547

Glenwood Ave. 8600 LLC  
P.O. Box 2346  
Smithfield, NC 27577-2346

PIN 0777687380 & PIN 0777781028

Cornerstone Village HOA, Inc.  
100 Europa Dr.  
Chapel Hill, NC 27517-2357

PIN 0777689016

Tom J. & Desiree L. Spencer-Walters  
32121 Big Oak Ln.  
Castaic, CA 91384-4122

PIN 0777689008

David Brown & Pamela Wyatt  
4 Gungarten Cl.  
Kellyville NSW 2155  
Australia

PIN 0777688182

Steven P. & Jennifer T. Tagsold  
8211 Martello Ln.  
Raleigh, NC 27613-6968

PIN 0777688190

Rezowan Hossain  
2001 Reid St.  
Palatka, FL 32177-2939

PIN 0777688174

Christopher B. Mangan  
8213 Martello Ln.  
Raleigh, NC 27613-6968

PIN 0777782110

Imad M. & Mary Lenore Khalil  
8409 Billingsworth Way  
Raleigh, NC 27613-6985

PIN 0777782055

James A. Meeks  
8201 Shadow Stone Ct.  
Raleigh, NC 27613-5211

PIN 0777783024

Robert Francis & Claudine Kee Dusablon  
8200 Shadow Stone Ct.  
Raleigh, NC 27613-5210

PIN 0777783095

Marilyn Kay French  
8202 Shadow Stone Ct.  
Raleigh, NC 27613-5210

PIN 0777783191

Andrew Robert McIntosh  
8204 Shadow Stone Ct.  
Raleigh, NC 27613-5210

PIN 0777684079

Glenwood Crossing HOA c/o PPM  
11010 Raven Ridge Rd.  
Raleigh, NC 27614-8837



PIN 0777686131  
Geoffrey L. Henry &  
Gwendolyn Hunter  
8603 Thunderwood Dr.  
Raleigh, NC 27617-8732

PIN 0777686102  
Nicola J. Huns  
8605 Thunderwood Dr.  
Raleigh, NC 27617-8732

PIN 0777685172  
David L. Vicens  
8607 Thunderwood Dr.  
Raleigh, NC 27617-8732